

S/N: 09/833,401
Reply to Office Action of January 13, 2004

Remarks

In response to the Final Office Action mailed January 13, 2004, Applicants respectfully request reconsideration of the rejections and that the case pass to issue in light of the remarks below.

The Examiner sets forth the following rejections: (1) claims 1-7 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S.P.N. 4,962,759 to Stern (hereinafter the Stern patent) in view of U.S.P.N. 6,183,430 to Lin (hereinafter the Lin patent), and further in view of U.S.P.N. 5,245,714 to Haraga (hereinafter the Haraga patent); claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the Stern, Lin and Haraga patents in view of U.S.P.N. 5,588,161 to Barrada (hereinafter the Barrada patent); (2) claims 1 and 8-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Lin patent in view of the Haraga patent; (3) claims 12-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Lin and Haraga patents in further view of U.S.P.N. 5,050,591 to Sandrin (hereinafter the Sandrin patent); (4) and claims 14-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Sandrin patent in view of U.S.P.N. 3,045,254 to Cook (hereinafter the Cook patent).

With respect to the rejections to claims 1-9 and 11-13, the Examiner incorporated by reference his previous rejection set forth in the previous Office Action mailed September 10, 2003. To the extent that the Examiner is incorporating the same rejections, Applicants hereby incorporate their arguments as previously set forth in response to the aforementioned Office Action. Applicants respectfully submit that the incorporation of these arguments is sufficient to overcome the Examiners rejection and pass claims 1-9 and 11-13 to issue.

In addition to incorporating the Applicants' previous reply, the Applicants turn to the statements made by the Examiner in the response to arguments of the Final Office Action mailed January 13, 2004. The Examiner asserts that the Haraga patent is analogous to the

S/N: 09/833,401
Reply to Office Action of January 13, 2004

Stern and Lin patents because the patents are reasonable pertinent to Applicants' invention. The Applicants argued to the contrary in their previous response. Nonetheless, the Examiner maintains his position, and in support thereof, points to a Federal Circuit case entitled *In re Oetiker*, 977 F.2d 1443, (Fed. Cir. 1992), and cites to of the following quotation.

In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.

Applicants submit that the meaning of the above-quoted portion is better understood if it is placed in the context of the case to which it relates. As such, Applicants have recited below the portion of the Oetiker case which relates to the above-cited portion so that its meaning can be taken in the context of the case.

Patent examination is necessarily conducted by hindsight, with complete knowledge of the applicant's invention, and the courts have recognized the subjective aspects of determining whether an inventor would reasonably be motivated to go to the field in which the examiner found the reference, in order to solve the problem confronting the inventor. We have reminded ourselves and the PTO that it is necessary to consider "the reality of the circumstances",

--in other words, common sense--in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.

It has not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The combination of elements from non-analogous source, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a

S/N: 09/833,401
Reply to Office Action of January 13, 2004

prima facie case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the applicant's invention itself. (Emphasis Added)

As shown above, the Oetiker case relates to the question of whether one seeking to fasten a hose clamp would be expected to look to fasteners used for fastening garments. Oetiker found that one would not be so motivated, and based on the lack of motivation, that the art was non-analogous. The Applicants submit a similar argument - one endeavoring to solve problems with respect to bath mats would not be expected to look to whirlpools.

The Applicants claimed invention relates to bath mats. Bath mats are removable items which can be easily removed from bath tubs. Both the Stern and Lin patents relate to bath mats, and therefore, are analogous art. The Haraga patent relates to whirlpools. Whirlpools are not removable. Thus, the Haraga patent is thus non-analogous art. One endeavoring to solve problems related to removable bath mats would not look to much larger and non-removable whirlpools to solve the problems. There is no motivation in either patent to look towards whirlpools.

Moreover, the Applicants invention relates to additional problems with respect to the electrical operation of the bath mat, such as possible hazardous shocks to the bather. The Haraga patent is non-analogous art with respect to solving this problem because one endeavoring to solve bath mat electrical problems would not look towards whirlpools. The electrical operation of whirlpools is much more complex and different than the electrical operation of bath mats. Thus, there is no motivation from the Stern and Lin patents to look towards whirlpools to solve electrical problems

The Applicants respectfully submit that the foregoing demonstrates the Haraga patent is non-analogous art to the Stern and Lin patents as outlined by the standards set forth in Oetiker. In short, the problems faced by the removable bath mats of the Stern and Lin patents would not lead one to look towards the non-removable Haraga whirlpool, and there is

S/N: 09/833,401
Reply to Office Action of January 13, 2004

no teaching in the Stern and Lin patents to look towards the complex electrical problems of the Haraga whirlpool to solve the removable bath mat electrical problems.

The Examiner, in the response to arguments, further asserts that even if the Applicants' arguments are correct, and the Haraga patent is non-analogous art, the Lin and Stern patents can be used to reject the claims without relying on the Haraga patent. In particular, the Examiners submits that the Lin patent shows a controller that is electrically isolated from the bather. This is wrong. The Lin patent only discloses that a remote control 51 is wired to the controller. Thus, it cannot be electrically isolated therefrom, as recited by the Applicants in claim 1.

With respect to the 35 U.S.C. § 103 rejections to claims 14-25 over the Sandrin and Cook patents, Applicants respectfully submit that the proposed combination fails to teach the claimed invention. This is a new rejection which is addressed for the first time by the Applicants with this response.

Claims 14-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Sandrin and Cook patents. Independent claim 14 includes a plurality of flexible blocks secured between the layers defining the plurality of air passages at spaced locations adjacent the air passages and sealed between the layers to prevent water contact with the blocks. Independent claim 20 includes at least one foam member sandwiched and sealed between the layers defining the plurality of air passages to prevent water contact with the foam member. In contrast to the Examiner's position, the Applicants submit that there is no motivation to combine the Sandrin and Cook patents and that even such an improper combination still fails to teach these claimed limitations.

The Sandrin patent teaches away from any combination with the Cook patent. In particular, Sandrin fails to provide any suggestion, motivation, or incentive to include the claimed flexible blocks or foam members. As indicated in the portion of the Sandrin patent

recited below, the Sandrin patent merely relates to forming air channels having different sizes to support a bather.

As shown in the drawing figures, the distances between the weld lines defining the channel 32 are less than the distances between the weld lines defining the first channel 31 such that, as described below, when the mat is in use, the conduits constituting the first channel 31 are larger than those constituting the second channel 31. With this arrangement, the body of the user can be supported by the conduits of the first channel 31 without interfering with the holes 5 of the second channel 31, in order to avoid impeding the operation of the mat 1 itself. (Column 3, Line 50, emphasis added)

Sandrin's use of different size air channels fails to provide any teachings towards including flexible blocks or foam members. In fact, the Sandrin patent appears to teach away from any such motivation as it would contradict the express purpose of the Sandrin patent to provide the support through differently sized air conduits. Moreover, such a combination is inoperable as the use of flexible blocks or foam members would plug the air conduits and impede the flow of air.

Even the improper combination of the Sandrin and Cook patents fails to teach the claimed invention. As indicated in the portion of the Cook patent recited below, the Cook patent only discloses a foam, inner layer 64 that rests against a tub wall.

The liner 18 is composed of an outer or upper layer 62 of semi-flexible water impervious sheet material, such as the type of plastic materials used in the molding of pails, dishpans, and the like; and an inner or lower layer 64, adhered to the layer 62 of compressible material, such as foam rubber. The compressible layer 64 is of sufficient cross section and density to provide substantial cushioning for occupants of the tub 16, without undue collapse thereof. The surface of the plastic outer layer (Column 2, lines 36-34) the

S/N: 09/833,401
Reply to Office Action of January 13, 2004

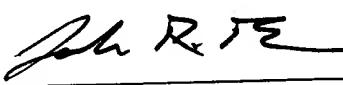
As shown in Figure 3 of the Cook patent, the layer 64 rests against at tub access wall flange 32. The layer 64, therefore, cannot be sealed from water contact. Still further, the layer 64 does not define air passageways.

Independent claims 14 and 20 both require that the flexible blocks or foam member to be sealed such that they are prevented from water contact and to define the air passageways. Clearly, the foam member of the Cook patent does not define the air passageway and it is not sealed from water contact.

As such, even the improper combination of the Sandrin and Cook patents still fails to teach each element recited in independent claims 14 and 20. Accordingly, independent claims 14 and 20 and dependent claims 15-19 and 21-25, which depend therefrom, are patentable and nonobvious over the combination of the Sandrin and Cook patents.

In view of the reasons above, the Applicants respectfully submit that each rejection has been fully replied to and traversed. The Applicants respectfully request that the Examiner reconsider the rejections and pass the case to issue. The Examiner is invited to call the undersigned attorney if it would advance the prosecution of this case to issue.

Respectfully submitted,
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